

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Integrated Health Services of Michigan at Riverbend and Local 332, International Brotherhood of Teamsters, AFL-CIO. Case 7-CA-39662

August 6, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on March, 31, 1997, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on May 12, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 7-RC-20980. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On July 7, 1997, the General Counsel filed a Motion for Summary Judgment. On July 8, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 22, 1997, the Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the ground that the unit RNs and LPNs are statutory supervisors.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there is no issue requiring a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

1. The name, address, date of hire, length of continued service, licensure, rate of pay, classification, full-time, regular part-time, or contingent status, areas of expertise, shift, special training, current work location, and job classification of every employee within the bargaining unit since March 14, 1997 and indicate whether or not such employees are still employed as of the date of your response in the same categories, and, if not, the changes.

2. Provide a copy of every schedule of bargaining unit employees that was utilized to determine the shifts, locations of work and hours for the period of October, 1996 through and including the date of your response.

3. Provide a copy of every policy, manual, procedure, handbook, guidebook or orientation material used by the Employer to determine and/or inform employees what will be their wages, insurance benefits, pension benefits, vacation benefits, or used to determine or inform employees of the Employer's disciplinary policies, dress policies, attendance policies, work rules, disciplinary schedule, promotional rights, transfer rights, seniority rights, grievance procedure, dispute resolution procedures, evaluation procedures or any other written material that is used to determine or inform employees of wages, hours, or other terms and conditions of employment.

4. Provide the disciplinary records of every employee in the bargaining unit that could be used by the Employer to affect wages, hours or other terms and conditions of employment, including, but not limited to, disciplinary progressions, evaluations, transfers, promotions, merit increases and the like.

5. Describe any contemplated changes in wages, hours or other terms and conditions of employment that were reduced to writing and/or planned to occur prior to March 14, 1997, but were to take effect after that date, up to and including the date of your response. Separately for each such change, including but not limited to those affecting rates of pay, shifts, insurance, pensions, vacations, holidays, evaluations, discipline, attendance, overtime, holidays and other benefits, indicate when the change will be effective, when they were first reduced to writing, and when they were first planned.

6. Describe each change in wages, hours or other terms and conditions of employment that the Employer has made with respect to any individual or group of employees in the bargaining unit since March 14, 1997, and separately for each indicate when the action was taken, how it was commu-

nicated to employees and how long the changes will last.

Although the Respondent's answer denies that the foregoing information is relevant and necessary to the Union's performance of its duties as the exclusive bargaining representative, it does so solely on the basis that the Union was improperly certified. In any event, it is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Maple View Manor*, 320 NLRB 1149 (1996); *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Grand Blanc, Michigan (the Respondent's Grand Blanc facility), has been engaged in the operation of a skilled care nursing home.²

During the year ending December 31, 1996, the Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000 and purchased goods and materials valued in excess of \$50,000 from points located outside the State of Michigan and caused the goods and materials to be shipped directly to its Grand Blanc facility. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held February 28, 1997, the Union was certified on March 14, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time registered nurses, licensed practical nurses, and contingent nurses employed by Respondent at its Grand Blanc facility; but excluding all other employees,

clerical employees, and guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About March 20, 1997, the Union requested the Respondent to bargain and to furnish information and, since about the same date, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after March 20, 1997, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Integrated Health Services of Michigan at Riverbend, Grand Blanc, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 322, International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

¹ Member Higgins notes that he dissented from the Board's denial of the Respondent's request for review with respect to the Regional Director's determination that the unit nurses are not supervisors. However, he agrees that the Respondent has raised no new issues in this "technical" 8(a)(5) case warranting a hearing and that summary judgment is therefore appropriate.

² In its answer to the complaint, the Respondent affirmatively states that the facility is also a subacute care facility.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time registered nurses, licensed practical nurses, and contingent nurses employed by Respondent at its Grand Blanc facility; but excluding all other employees, clerical employees, management employees, and guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on March 20, 1997.

(c) Within 14 days after service by the Region, post at its facility in Grand Blanc, Michigan, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 31, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 6, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 332, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time registered nurses, licensed practical nurses, and contingent nurses employed by us at our Grand Blanc facility; but excluding all other employees, clerical employees, management employees, and guards and supervisors as defined in the Act.

WE WILL furnish the Union the information that it requested on March 20, 1997.

INTEGRATED HEALTH SERVICES OF
MICHIGAN AT RIVERBEND

³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."